

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-214846

DATE: July 24, 1984

MATTER OF: Mohawk Motor Inn and Mohawk Motor
Inn Restaurant

DIGEST:

Where two separate concerns, a motel and restaurant, bid on a food and lodging procurement, the motel bidding on the lodging portion of the solicitation and the restaurant on the food portion, and the two bids were mailed together with a cover letter from a consulting service representing both bidders, which advised the contracting officer that the motel and restaurant were bidding as joint venturers, each bid had to be considered a separate bid and the agency properly rejected the bids because the solicitation provided for aggregate bids.

Don Strickland's Consultant and Advising Service (Don Strickland) protests on behalf of the Mohawk Motor Inn (Inn) and the Mohawk Motor Inn Restaurant (Restaurant) against the rejection by the contracting officer at Fort Drum, New York, of a bid submitted by the Inn and Restaurant, allegedly as joint venturers, in response to invitation for bids (IFB) No. DAKF36-84-B-0019. Don Strickland also protests the refusal by the contracting officer to send the matter to the Small Business Administration (SBA) for issuance of a certificate of competency (COC).

The protest is denied.

The invitation solicited meals and lodging for United States Armed Forces applicants and enlistees being processed through the Military Entrance Processing Station located in Buffalo, New York, for, among other things, a base year (items 0001a-0001d). The package submitted by the protester consisted of (1) a bid by the Inn which included prices for lodging (items 0001a and b) and a statement "See Restaurant Bid" was inserted for items 0001c and "d," covering meals;

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(2) a bid submitted by the Restaurant which included prices for meals (items 0001c and "d") and a statement "See Motel Bid" was inserted for the items covering lodging (items 0001a and "b"); and (3) a cover letter from Don Strickland, addressed to the contracting officer, explaining that the Inn and Restaurant were bidding as joint venturers. Both bids were rejected as nonresponsive since they did not comply with paragraph M-3 of the solicitation, which provides as follows:

"Bids received without a dollar amount or N/C (No charge) entered for Item 0001a, b, c, and d, listed on the Bid Schedule, Section B., shall be considered nonresponsive and will be rejected."

The Department of the Army (Army) contends that two bids were submitted, each from a separate entity, and that neither of the bids was made in the name of a joint venture. The Army further argues that Don Strickland legally cannot establish a joint venture relationship between two of its clients merely by pronouncing them a "joint venture" in a letter forwarding their bids to the government. The Army points out that the owner of the Restaurant, when asked after bid opening, admitted that he had no joint venture agreement with the Inn. Also, pursuant to a preaward survey, both the Inn and the Restaurant were determined to be nonresponsive.

Don Strickland argues that the two companies entered into a verbal agreement before the bid package was submitted and that they intended to wait until it was determined who would receive the award before entering into a formal written agreement. Don Strickland further states that the intentions of the two firms were fully revealed in the cover letter and that Federal Acquisition Regulation (FAR), § 9.6, 48 Fed. Reg. 42154, 42155 (1983) (to be codified at 48 C.F.R. § 9.6), permits contractor team arrangements. Don Strickland contends that paragraph M-3 was satisfied by combining the contractors' team bid with its cover letter, thus making them one bid.

The Army contends that FAR, § 9.6, 48 Fed. Reg. 42155, does not apply, arguing that the contractor team arrangement is conditioned on the participants forming a legal relationship of partnership, joint venture, or prime and subcontractor. The Army contends that no such legal relationship exists in this case. Finally, the Army explains that the reason this matter was not forwarded to SBA for possible

issuance of a COC is that where, as in this case, a bid is found to be nonresponsive and the bidder nonresponsive, the matter is not forwarded to SBA for possible issuance of a COC.

It is fundamental that the responsiveness of a bid must be determined on the basis of the bid submitted at bid opening. See Garrett Enterprises, Inc., B-196659, Sept. 29, 1980, 80-2 C.P.D. ¶ 227. Because of this, we need only examine the package submitted by Don Strickland to ascertain whether a joint venture bid was submitted and thus responsive. We are unable to conclude that the contracting officer's determination that the package did not evidence a joint venture bid was unreasonable.

In our view, the package contained two nonresponsive bids along with a statement from a nonbidder representative indicating that, in effect, one joint venture bid was submitted, despite the contrary separate nature of the bids. While Don Strickland's consulting agreement with the Inn and the Restaurant was included in the package, we agree with the Army's position that neither this nor anything else in the package evidenced or conferred authority on Don Strickland to create a joint venture agreement between the Inn and the Restaurant by merely stating so in the cover letter. Therefore, both bids were nonresponsive for not complying with paragraph M-3 of the solicitation.

Consequently, the contracting officer acted reasonably by not forwarding this matter to the SBA for possible issuance of a COC since it is only in cases involving the responsibility of a small business firm that the matter is referred to SBA for consideration in connection with its COC procedures. See Skyline Credit Corporation, B-209193, Mar. 15, 1983, 83-1 C.P.D. ¶ 257. In the present case, such referral would have served no useful purpose since both of the small businesses were determined to be nonresponsive.

Accordingly, the protest is denied.

Milton J. Aroslan
for Comptroller General
of the United States